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February 24, 2012

VIA EMAIL: CEQA.Guidelines@ceres.ca.gov.

CEQA Guidelines Update

c/o Christopher Calfee
1400 Tenth Street
Sacramento, CA 95815

Re: SB 226 Proposed Guidelines

Dear Mr. Calfee:

California homebuilders, as represented by the California Building Industry Association (CBIA), are grateful to you for providing us this opportunity to comment on the SB 226 Proposed Guidelines (Proposed Guidelines).

BACKGROUND

Many businesses throughout California have come to recognize a growing need to reform CEQA in a way that eliminates abuses that simply provide project opponents with a no-cost tool to stop projects for reasons unrelated to the environment. These tactics employed by “just-say-no” project opponents has drawn commentary from the judiciary:

In CEQA cases time is money. A project opponent can “win” even though it “loses” in an eventual appeal because the sheer extra time required for the ... appeal (with the risk of higher interest rates and other expenses) makes the project less commercially desirable, perhaps even to the point where a developer will abandon it or drastically scale it down.

County of Orange v. Superior Court (2003) 113 Cal.App.4th 1, 6.

The prolonged and severe Great Recession has compounded the abuse of CEQA. The effect on the residential for-sale housing market has been devastating – producing an 80% reduction in the construction of new homes and an 85% unemployment rate (accounting for 1 in 3 of unemployed Californians). Moreover, the impacts of the recession are much broader than those felt just by homebuilders. The state continues to suffer extraordinarily high unemployment and severe reductions in tax revenues as a result.

SB 226

CBIA supports real incentives for infill development and for that reason supported SB 375. In our view, SB 226 presented an opportunity to provide incentives for infill projects through CEQA reform. As explained below, that opportunity was not realized.

California businesses want CEQA reform that is real, quantifiable and sustainable - to California's businesses, their customers as well as the environment; reform that reduces costs, time and uncertainty. It should be as easy to comply with CEQA for project proponents as it is for project opponents.

Two of the most significant barriers to infill are the increased cost to plan and construct infill projects and the increased red tape – CEQA being the most significant. Infill is not incentivized by increasing costs and burdens even if there is some minor reduction in red tape.

The Narrative Explanation highlights the health and environmental benefits of infill. However, rather than incentivizing all infill, the policy of SB 226 takes on a separate issue of streamlining some “green” projects that incorporate design features that are greater than what is currently required in law. This requirement will make infill more expensive and the use of the Proposed Guidelines will be extremely limited as a result.

THE PROPOSED GUIDELINES

OPR's ability to draft guidelines that incentivize infill is necessarily limited by the parameters of SB 226. The practical effect of implementing the additional criteria beyond the requirements of existing law as required by SB 226 make these Proposed Guidelines more impracticable. This type of slow creep is part of the underlying problem. In the 40 years since CEQA was enacted, land use and environmental laws have been expanded to the point that they are now the strictest in the world. This should ease CEQA's burden rather than exacerbate it as SB 226 does.

CEQA: The Project's Effect on the Environment vs. The Effect of the Environment on the Project

More than a few CEQA cases have held that CEQA is not concerned with the effect of the environment on proposed projects:

- Consideration of the effect of the environment on the project are “beyond the scope of CEQA.” *Baird v. County of Contra Costa* (1995) 32 Cal.App.4th 1464, 1468 (existence of contamination near proposed project that might adversely affect the project and its residents is irrelevant to CEQA review).
- The purpose of an EIR is to identify the significant effects of a project on the environment, not the significant effects of the environment on the project. Therefore, an EIR is not required to discuss the impacts on staff and student health of locating the project near freeways. *City of Long Beach v. Los Angeles Unified School District* (2009) 176 Cal.App.4th 889, 905.

¹ In a departure from the focus of CEQA, namely a project's effects on the environment, SB 226 focusses on Vehicle Miles Travelled (VMT) rather than tailpipe emissions. As vehicles become cleaner, VMT becomes a false proxy for environmental impacts.

- For the same reason, an EIR is not required to discuss the impact of sea level rise on a project. The Court in *Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455 (*Ballona*), went so far as to invalidate portions of Guideline section 15126.2 (locating a subdivision astride an active fault line, floodplains, coastlines, wildfire risk areas, etc.) and the Appendix G checklist form (same).² *Ibid.* at 473-474.
- The impact of noxious odors on future resident of the development was not a significant effect on the environment and therefore did not require an EIR. *South Orange County Wastewater Authority v. City of Dana Point* (2011) 196 Cal.App.4th 1604, 1614-1618

Within this context, SB 226 requires that the Proposed Guidelines “promote...[p]rotection of public health, including the health of vulnerable populations from air or water pollution, or soil contamination.” Public Resources Code section 21094.5.5(b)(7).

The Proposed Guidelines provide examples of “uniformly applicable development policies or standards” including “[r]equirements for protecting residents from air pollution associated with high volume roadways”. Section 15183.3(e)(8)(D).

Accordingly, the statute and Proposed Guideline should be interpreted and applied in a manner consistent with CEQA’s overall scope of focusing on a project’s impact on the environment rather than the environment’s impact on the project. This means that the focus of this goal should be to protect vulnerable *existing* populations from air or water pollution, or soil contamination caused by the project. Methods to address the impacts of existing air, water or soil pollution on occupants of a project are contained in other laws.

The Narrative (at p. 5) supports this interpretation with the following:

Infill development is also linked to health benefits. According to the American Lung Association,

Sustainable, mixed-use communities designed around mass transit, walking and cycling have been shown to reduce greenhouse gas emissions, air pollution, and a range of adverse health outcomes including traffic injuries, cancers, lung and heart disease, obesity, diabetes, and other chronic health conditions. In addition to the benefits to lung health, individuals who live in mixed-use and walkable communities have a 35 percent lower risk of obesity.

(American Lung Association in California, “Land Use, Climate Change & Public Health Issue Brief: Improving public health and combating climate change through sustainable land use and transportation planning” (Spring 2010).) Beyond the benefits from reductions in obesity, diabetes, heart and lung disease, cancers and other chronic illnesses associated with increased physical activity, smart growth development patterns “could help California cut over 132,000 tons of air pollution and avoid up to 140 premature deaths, 105,000 asthma attacks and other respiratory symptoms, 16,550 work days lost and \$1.66 billion in health costs in 2035.” (American Lung Association in California, Fact Sheet, “Smart Growth will help California avoid air pollution-related illnesses, deaths and costs.”)

² These existing hazards are already addressed and mitigated pursuant to other laws and should not be inserted in CEQA to provide project opponents with another bite at the apple.

In other words, there are significant health benefits just in producing infill. This should be sufficient to comply with both the statutory language in SB 226 and the Proposed Guidelines, above.

Unfortunately, Appendix M: Projects Near High-Volume Roadways, the Narrative Explanation of the Proposed Guidelines and the Appendix N: Infill Environmental Checklist all require that the project proponent identify and mitigate air quality impacts of the pre-project environment on the project. See, Appendix M, p.2; Narrative Explanation, pp. 19-20³ and Appendix N⁴.

Appendix M: Projects Near High-Volume Roadways and the Appendix N Checklist at 5b triggers mitigation measures for residential projects located within 500 feet of a high volume roadway. The Bay Area Air Quality Management District recently enacted a similar requirement which was subject to legal challenge. The Court, in *California Building Industry Association v. Bay Area Air Quality Management District* (Alameda County Superior Court Case No. RG10-548693) found that there is evidence to support a fair argument that these requirements might discourage urban infill development or encourage suburban development. See, Statement of Decision at p.6, attached. The Court set aside the requirement as a result.

³ The Narrative Explanation states:

With regard to air pollution, attention has focused in recent years on the health effects of developing sensitive uses near sources of toxic air contaminants, such as high-volume roadways. Evidence indicates that risk increases near high volume roadways, generally within 500 feet, though precise distances and risk factors vary considerably based on local topography, meteorology and other site-specific factors. (See, e.g., CARB 2005 Handbook; BAAQMD CEQA Thresholds (May 2011), § 5.2.5.) Many transit corridors are located near high volume roadways. Prohibiting any new development within the transit corridors would counteract the policies described above that direct new growth toward transit-served locations. Notably, it would also undermine the health benefits from active transportation associated with transit-oriented development. Some design strategies have been identified that may ameliorate the adverse effects of high volume roadways, such as high efficiency air filters, locating air intakes away from roadways, etc. The effectiveness of such strategies, however, is also highly dependent on site-specific circumstances. (California Air Pollution Control Officers Association, "Health Risk Assessments for Proposed Land Use Projects," April 2009.) Therefore, similar to the soil and water contamination standards described above, the performance standards would call on projects to implement whatever design requirements are identified in local plans or ordinances that address such effects. If such plans have not been adopted, the performance standards require projects to implement whatever measures are identified in a health risk assessment or environmental document prepared for the project.

⁴ Appendix N provides:

5b. If a residential project is located within 500 feet a high volume roadway, or such distance that the local agency or local air district has determined is appropriate based on local conditions, describe the measures that the project will implement to protect public health. Such measures may include policies and standards identified in the local general plan, specific plans, zoning code or community risk reduction plan, or measures recommended in a health risk assessment, to promote the protection of public health. Identify the policies or standards, or refer to the site specific analysis, below.

The Appendices M and N requirements are “beyond the scope of CEQA,” and are contrary to the purpose of the Proposed Guidelines. The Proposed Guideline Section 15183.3(a) states that “[t]he purpose of this section is to expedite the review (sic) environmental review process for infill projects”. The Proposed Guidelines are also titled: “Streamlining for Infill Projects”. One does not streamline or incentivize infill by making it more burdensome and expensive.

Accordingly, we recommend that these provisions of Appendix M: Projects Near High-Volume Roadways (p.2), the Narrative Explanation (p.19-20) and Appendix N be removed.

Similarly, the Appendix N checklist contains quite a few items that purport to require these projects to consider and mitigate the impact of the existing environment on the proposed project. See various provisions in Appendix N contained in the following: VI. Geology and Soils; VIII Hazards and Hazardous Materials; IX. Hydrology and Water Quality; XII Noise. Provisions that require projects to consider and mitigate impacts of the environment on the project should be removed.

VMT

Appendix M establishes a 3-tiered approach to determining what level of VMTs are associated with a project. The categories are: (1) less than 75% of per capita VMT for the MPO; (2) 75-100% of per capita VMT for the MPO and; (3) more than 100% of per capita VMT for the MPO.

The second tier, while reducing VMT, must still spend an additional \$6,000 per home to comply with CALGreen Tier 1, and the third tier must spend an additional \$11,000 per home to comply with CALGreen Tier 2. Infill is already too expensive and these added costs will act as a disincentive, rather than an incentive.

Appendix M and the Narrative Explanation further complicate the process by specifying how a project proponent must demonstrate a determination of VMTs.

Appendix M gives 3 possible approaches to determine what level of VMTs are associated with a project: locating in a low VMT Traffic Analysis Zone (TAZ) within the region; in a low VMT locale (i.e., urban areas, city centers or near transit); and/or by including VMT-reducing project features, a sketch tool (i.e., CalEEMod or URBEMIS). Appendix M, p.2, and footnotes.

The Narrative Explanation on p. 21, goes further:

Metropolitan Planning Organizations (MPOs) can use their travel demand model to estimate average household or home-based VMT at the traffic analysis zone geographic level. If an MPO has not produced such estimates, however, then estimates from the California Interregional Travel Demand Model (CITDM) can be used. In the absence of any travel model zonal VMT estimates, a sketch model can be used to estimate project VMT for comparison to the regional average VMT.

This explanation adds a couple of new restrictions: a new model – CITDM, and a pecking order among the methods to determine VMTs. First, one must use the MPO estimates; if the MPO hasn't produced the estimates only then CITDM may be used; finally, if and only if there is no travel model zonal VMT estimates a sketch model may be used.

This process is overly complicated, provides new opportunities for litigation, establishes further burdens on the project proponent and therefore, will incline project applicants to avoid using the Proposed Guidelines.

First, the process requires the project applicant to look to the MPO to produce a map – something they are not required to do under existing law. Project opponents, and possibly project proponents, may believe that the maps (or data) are inaccurate and unreliable and when a project seeks to rely on these maps, there will be project specific litigation. MPOs may also become a defendant in litigation as a result of these maps or data.

Second, it has been our experience that the public is skeptical about the use of black-box modeling because the models are not transparent. They can be manipulated by changing formulas to produce desired outcomes. Their use, rather than creating some objective means of determining VMTs, foments suspicion.

The pecking order of priorities also increases costs for the project proponent.

For these reasons, we do not think this process will act as an incentive for infill projects. Rather, we suggest that a simple, easily verifiable metric be used: Only projects located within ¼ mile of a transit station should qualify. The added costs of CALGreen Tier 1 and Tier 2 should be eliminated.

Language

The Proposed Guidelines uses new language to refer to existing concepts. For example, the Proposed Guideline section 15183.3(c)(1)(E) uses the term “substantially mitigate”. In existing law, Guideline section 15162(a)(3)(B) provides that a supplemental EIR is required only if the impacts with mitigation are substantially more severe. In order to avoid unnecessary litigation, we recommend using “substantially more severe.”

Thank you for considering our views. We believe that these recommendations would make the Proposed Guidelines more likely to be used.

Very truly yours,



Nick Cammarota
General Counsel

FILED
ALAMEDA COUNTY

FEB 14 2012

CLERK OF THE SUPERIOR COURT
By AMH HANAL Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA**

California Building Industry Association,
Petitioner and Plaintiff

vs.

Bay Area Air Quality Management District,
Respondent and Defendant.

Case No. RG10-548693

Proposed Statement of Decision

Petitioner and Plaintiff, California Building Industry Association (CBIA), challenged the June 2, 2010 decision of the Bay Area Air Quality Management District (BAAQMD) to adopt its Resolution No. 2010-06 (1 AR 01-4)¹. By its resolution, it adopted its new California Environmental Quality Act (“CEQA”) air quality thresholds of significance (the Thresholds). After this court’s orders on demurrer, only CBIA’s Second

¹ Citations to the Administrative Record take the Format of “[Volume] AR [Page Number]”.

Claim for Relief (Violation of CEQA) and Third Claim for Relief (“Arbitrary & Capricious Rulemaking Without Rational Basis”) remained in controversy. This matter came on regularly for hearing on the Petition for Writ of Mandate on January 9, 2012 in Department 24. Appearing for CBIA was Andrew B. Sabey, Esq. and Christian H. Cebrian, Esq. of Cox, Castle and Nicholson LLP. Appearing for BAAQMD was Ellison Folk, Esq. and Erin Chalmers, Esq. of Shute, Mihaly & Weinberger LLP.

After hearing the arguments and considering all papers filed with the court, including the certified administrative record, the court issued an oral tentative decision granting the Petition for the Writ of Mandate and directed CBIA to prepare a Proposed Statement of Decision for the court’s review and consideration. Having considered CBIA’s Proposed Statement of Decision, the Court now issues the following Proposed Statement of Decision. (CRC 3.1590.)

BACKGROUND

BAAQMD is a public agency, a regional air pollution control district as described in Health & Safety Code § 40000, *et seq.* It is charged with the primary responsibility for control of air pollution from all sources other than motor vehicle emissions in its region. (Health & Safety Code § 40000).

In furtherance of its important charge, BAAQMD created and adopted a set of Air Quality CEQA Thresholds of Significance. The adoption of the thresholds included the

thresholds themselves, and the Resolution that BAAQMD and all other lead agencies in the district apply BAAQMD's Air Quality Thresholds of Significance on all CEQA projects, (1 AR03-4) and, further, that projects failing to meet the Thresholds "will normally be determined to have a significant effect on the environment for purposes of CEQA."(1AR 03.)

Prior to its adoption of Resolution 2010-06, BAAQMD did not engage in any CEQA analysis. BAAQMD maintains the position that CEQA does not apply to its discretionary act of the promulgation of the Thresholds on the theory that its Resolution is not a CEQA "project."

CBIA asserts four arguments in support of its Petition:

First, CBIA argues that the promulgation of the Thresholds is a CEQA "Project" and, as such, must be evaluated in the manner required by CEQA.

Second, CBIA argues that BAAQMD's Thresholds are arbitrary and capricious because they mandate a finding of "significant environmental effect" that is contrary to CEQA. The argument is that the Thresholds require an impermissible evaluation "of the environment on the project" and that such analysis imposes an improper requirement on the proponent of any project which has the effect of requiring a higher level of CEQA review solely because of the improper requirement.

Third, CBIA argues that the Thresholds include thresholds for which no substantial evidentiary support can be found in the administrative record, thus violating CEQA's

requirement that thresholds of significance be supported by substantial evidence.

Fourth, CBIA argues that BAAQMD's promulgation of the Thresholds fails the "rational basis test" because substantial evidence does not exist for agency approval.

BAAQMD responds that the adoption of the Thresholds is not a "project" under CEQA. This argument has three parts: first, that it is not a "project" and thus the matter of its CEQA compliance is not ripe for adjudication; second, it is not a "project" and thus no environmental review is required; and third, even if the promulgation of the Thresholds were a project it would be exempt from CEQA review under the "common sense exemption" found in CEQA Guidelines § 15061(b)(3)².

BAAQMD also argues that while its Thresholds do require an analysis of the impact of the baseline air quality on a CEQA construction project, such an analysis is required by CEQA to evaluate air quality impacts to the health of people who may later reside in or visit a proposed construction project.

Finally, BAAQMD argues that the Thresholds are supported by substantial evidence and that the Thresholds are not arbitrary or capricious.

DISCUSSION

A CEQA analysis must be performed at some level for any "project". The legislature in 1994, defined "project" in Public Resource Code § 21065, to include any

² CEQA Guidelines are found at California's Code of Regulations title 14, chapter 3. §15000-15387 ("Guidelines".)

activity directly undertaken by any public agency which may cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. This definition has been the subject of multiple appellate determinations which have made clear that the definition of “project” calls for a broad reading. See *e.g.* *Muzzy Ranch Co. v. Solano County Airport Land Commission*, (2007) 41 Cal 4th 372, (“Muzzy Ranch”); *Plastic Pipe and Fittings Association v. California Building Standards Commission*, (2004) 124 Cal App 4th 1390; *Azuza Land Reclamation Co. v. Main San Gabriel Watermaster*, (1997) 52 Cal App 4th 1165 and *City of Livermore v. Local Agency Formation Commission*, (1986) 184 Cal App 3rd 531.

The court finds that BAAQMD’s promulgation of the Thresholds is a “project” under CEQA and, as such, BAAQMD is obligated by CEQA to evaluate the potential impact on the environment consequent to the project. The promulgation of the Thresholds fits the Public Resources Code § 21065 definition; it is a discretionary activity directly undertaken by a public agency which may cause a reasonably foreseeable indirect physical change in the environment. (Public Resources Code § 21065.)

The evidence in the administrative record supports the position that the promulgation of the Thresholds is intended to cause a change in the environment. See *e.g.* 1 AR 24, 1 AR 68, 29 AR 6584, 29 AR 6590, 29 AR 6643, 29 AR 6702.

While the evidence is not overwhelming, it does raise a fair argument that the implementation of the Thresholds may cause a reasonably foreseeable indirect change in the environment.

BAAQMD is incorrect that the challenge to the Thresholds is not ripe. The Thresholds here are much more like the “guidelines” in *Communities for a Better Environment v. California Resources Agency*, (2002)103 Cal App 4th 98 than they are like the “guidelines” in *Pacific Legal Foundation v. California Coastal Commission*, (1982) 33 Cal 3rd 158. The action in *Pacific Legal Foundation v. California Coastal Commission* was a challenge to the policy underlying a set of guidelines relating to public access. The court determined that the challenge was not ripe as “the guidelines are not mandatory...but rather adopt a flexible approach: the Commission is to determine the appropriateness of access exactions on a case-by-case basis.” (*Pacific Legal Foundation v. California Coastal Commission*, (1982) 33 Cal 3rd 158, 174.) In contrast, *Communities for a Better Environment v. California Resources Agency* was a challenge to the CEQA guidelines promulgated by the California Resources Agency applicable in every relevant case and not subject to any case-by-case appropriateness determination. While the Thresholds are mandatory only on BAAQMD itself, they are not mandatory on other agencies. The Thresholds are not flexible and, moreover, the Thresholds do not provide for a further determination by BAAQMD of the appropriateness of their application in any particular proposed project. The matter before the court presents a concrete legal dispute ripe for judicial evaluation.

BAAQMD is also incorrect in its contention that the evidence in the administrative record cannot support a fair argument that the Thresholds might discourage urban infill development, encourage suburban development or change land use patterns, and/or is too

speculative to support a fair argument that such an environmental impact could occur. The controlling case for this view is *California Unions for Reliable Energy v. Mojave Desert Air Quality Management District*, (2009), 178 Cal App 4th 1225, see also, *Plastic Pipe Fittings Association v. Californian Building Standards Commission*, (2004) 124 Cal App 4th 1390.

BAAQMD is also incorrect in its assertion that even if the promulgation of the Thresholds is a project, the common sense exemption found in Guidelines § 15061(b)(3) applies to the Thresholds á la *Muzzy Ranch* (*Muzzy Ranch Co. v. Solano County Airport Land Use Commission*, (2007) 41Cal 4th 372). The drawbacks with that assertion are clear. While in *Muzzy Ranch*, the agency made a finding in its resolution that the land use plan was not a CEQA project, which is not dissimilar to the instant case, the agency also filed a “Notice of Exemption” with the County Clerk, a pivotal point which is absent here. The Administrative Record here is devoid of any Notice of Exemption from the requirements of CEQA or any determination that the project is exempt from CEQA (other than that the contention that it is not a “project”) or any other assertion that the exemption might be applicable. In contrast, the filing of the Notice with the County Clerk in *Muzzy Ranch* was the assertion that the agency had made its determination that it could be seen with certainty that there is no possibility that its activity in question, the TALUS, may have a significant effect on the environment, thereby qualifying for the common sense exemption.

The absence here of that required (see *Muzzy Ranch* 41 Cal 4th 372,391) Notice leads the court to conclude that the common sense exemption argument is now raised as a

post-hoc justification for the purpose of this litigation. As such it must be rejected even if the record could have supported a common sense exemption.

Independent of the court's determination that the lack of the required Notice is a fatal defect to the assertion of the common sense exemption, the court also finds that the record does not support the exemption because a fair argument was raised before the agency that the Thresholds might result in displaced development or be a barrier to urban infill development.

It directly follows from the above that the promulgation of the Thresholds is a CEQA "project", that it is not exempt from CEQA review, and that the approval of the project without any CEQA environmental evaluation was an abuse of discretion by BAAQMD. For that reason the Thresholds must be invalidated by the court.

THE THIRD CAUSE OF ACTION

CBIA Also attacks the substance of the Thresholds as illegally requiring an analysis of the air quality effect of the existing baseline environment on a proposed project in addition to the effect on the air quality baseline as a consequence of a proposed project.

The Court, however, does not reach this issue as the court has determined that BAAQMD's promulgation of the Thresholds must be set aside for its failure to perform any CEQA analysis on such a project.

CONCLUSION

For the reasons stated above, the Petition for Writ of mandate is GRANTED. The

Court's Writ will issue requiring Respondent to set aside its Resolution No. 2010-06 and to take no further action to disseminate the Thresholds as a BAAQMD approved set of air quality thresholds until and unless BAAQMD fully complies with its obligations under CEQA.

Date: 2/14/12



Frank Roesch
Judge of the Superior Court

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

California Building Industry Association,
Petitioner/Plaintiff,

vs.

Bay Area Air Quality Management,
Respondent/Defendant.

) Case No. RG10-548693

) PROPOSED
) JUDGMENT

Plaintiff and Petitioner California Building Industry Association (“CBIA”) challenged the June 2, 2010, decision of the Bay Area Air Quality Management District (“District”) to adopt Resolution No. 2010-06 by which it adopted its new California Environmental Quality Act (“CEQA”) thresholds (“the Thresholds”). This matter came for hearing on the petition for writ of mandate on January 9, 2012, in Department 24 of the Superior Court for the State of California, Alameda County, the Honorable Frank

Roesch presiding. Appearing for CBIA was Andrew B. Sabey, Esq. and Christian H. Cebrian, Esq. Appearing for the District was Ellison Folk, Esq. and Erin Chalmers, Esq.

GOOD CAUSE APPEARING THEREFORE IT IS ORDERED AND ADJUDGED THAT:

1. For the reasons set forth in this Court's Statement of Decision Judgment GRANTING the petition for writ of mandate is entered in favor of Petitioner, CBIA as to the District's approval of Resolution No. 2010-06 being a CEQA project.

2. A peremptory writ of mandate directed to the District shall issue under seal of the Court, ordering the District to set aside all approvals set forth in Resolution No. 2010-06 and ordering the District to not disseminate these or any new approvals of officially sanctioned air quality thresholds of significance until the District fully complies with CEQA.

3. The District shall make its return to the writ no later than 90 days after service of the writ. This Court shall retain jurisdiction over the District's proceedings by way of return to the peremptory writ of mandate until the Court has determined that the District has complied with CEQA.

4. CBIA is awarded its costs of suit. The Court reserves jurisdiction to award attorney's fees, if appropriate, pursuant to any properly and timely filed motion by CBIA.

Date:

Frank Roesch
Judge of the Superior Court